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Supreme Court of the United States

OCTOBER TERM, 1958

No. 885

OWENSBORO ON THE AIR, INC., and
OWENSBORO PUBLISHING COMPANY, *Petitioners*

v.

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Of Counsel:

LOUCKS, ZIAS & JANSKY
American Building
Washington 4, D. C.

SPEARMAN & ROBERSON
Munsey Building
Washington 4, D. C.

JOSEPH F. ZIAS
American Building
Washington 4, D. C.

RUSSELL ROWELL
Munsey Building
Washington 4, D. C.

Attorneys for Petitioners

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on December 18, 1958, by a panel of three judges, one judge dissenting, and the order of the Court denying a petition for rehearing *en banc*, entered on February 2, 1959.

OPINION BELOW

The opinion of the Court of Appeals (App. 1a-16a) has been reported in 262 F. 2d 702 (1958). The Report and Order of the Federal Communications Commission (R. 15-37) has been reported at 15 Pike

& Fischer R.R. 1573 and its Memorandum Opinion and Order (R. 52-55) has been reported at 15 Pike & Fischer R.R. 1586e.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on December 18, 1958, and an order denying a petition for rehearing *en banc* was entered on February 2, 1959. (App. 17a) The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code, Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. 1254(1) and 64 Stat. 1132, 5 U.S.C. 1040.

QUESTION PRESENTED

Under Section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003) which requires, first, that there shall be publication of notice of proposed rule making, and second, that there shall be opportunity for participation in the rule making proceeding by interested persons, may the Federal Communications Commission on the basis of a Notice of Rule Making specifically proposing only a change in the classification of VHF Channel 7 in Evansville, Indiana, by changing the designation of that channel from commercial to educational, amend its Table of Television Assignments contained in its Rules and Regulations by deleting commercial VHF Channel 9 from Hatfield, Indiana, while that channel was involved in an adjudicatory proceeding between competing applicants, without first issuing and publishing a notice of further rule making proposing such Channel 9 amendment and affording interested and affected parties an opportunity to participate in the proceeding.

STATUTE INVOLVED

The pertinent provisions of Section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003) are as follows:

> "Sec. 4(a) Notice.—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. . . .
>
> "Sec. 4(b) Procedures.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. . . ."

STATEMENT

Owensboro On The Air, Inc. and Owensboro Publishing Company, petitioners herein and hereinafter called petitioners, are applicants in an adjudicatory proceeding still pending before the Federal Communications Commission for a new television station in Hatfield, Indiana, on Channel 9, which channel was allocated and made available for use there as the result of a specific rule making proceeding initiated by the petitioners.

While the above adjudicatory proceeding was in full progress, the Commission on June 26, 1956, issued a Notice of Proposed Rule Making proposing to amend the Table of Television Assignments contained in Section 3.606(b) of its Rules and Regulations by reallocating television assignments in Evansville, Indiana, so as to change the educational reservation in that city from Channel 56 to Channel 7. The notice is entitled "Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Evansville, Indiana)", and its first paragraph states that "Notice is hereby given in the above-entitled matter". (R. 1-2)

The notice specifically states that "the Commission is proposing the following channel changes:

City	Channel No. Present	Channel No. Proposed
Evansville, Indiana	7, 50, *56, 62	*7, 50, [illegible], 62"

(The asterisk indicates that the channel is reserved for educational use.) (R. 1-2)

The above Notice of Rule Making contains no proposal for, and gives no notice of, any amendment to the Commission's Rules involving deletion of Channel 9 from Hatfield and its assignment to Evansville. Neither Hatfield, Indiana, nor Channel 9 then assigned to Hatfield, is mentioned anywhere in the notice. On the contrary, in a Public Notice released simultaneously with the above Notice of Rule Making on June 26, 1956, the Commission specifically stated that "only" VHF Channel 7 in Evansville was involved. (R. 78)

The Evansville Channel 7 Notice of Rule Making provided for the filing of comments supporting or

opposing the proposed amendment to make Channel 7 in Evansville educational and also provided for the filing of comments in reply to original comments. (R. 1-2)

Petitioners filed no comments since the Notice contained no proposal affecting Channel 9 in Hatfield and failed to indicate that Channel 9 was involved in any way.

On December 3, 1956, the last day provided for the filing of comments, the two Evansville UHF stations (WFIE and WEHT) filed joint comments supporting the Commission's proposal to make Channel 7 in Evansville educational and they also urged "that Channel 9, allocated in Hatfield, Indiana. be reserved for educational use in Hatfield-Owensboro area". Mid-America Broadcasting Company of Louisville, Kentucky, also filed comments dealing primarily with the reallocation of Channel 7 from Evansville to Louisville, and in addition, requested that the Commission take action concerning reallocation or outright deletion of Channel 9 from Hatfield, Indiana. (R. 9-11)

Petitioners gained knowledge of these comments and the new and counterproposals through receipt of courtesy copies by mail. On December 28, 1956, petitioners filed a special Motion to Strike such portions of the above comments as involved the new proposals concerning the deletion, removal or reservation for educational use of the Hatfield Channel 9 assignment on the ground that they were not within the scope of the Evansville Notice of Rule Making and that no notice of proposed rule making had been issued with respect to Channel 9 in Hatfield as required by Section 4 of the Administrative Procedure Act. (R. 13-15)

The Commission did not dispose of the Motion to Strike until its final Report and Order wherein it amended the Table of Television Assignments by deleting Channel 9 from Hatfield, and the regulation thereupon became an accomplished fact. (R. 15-35)

An appeal was taken to the United States Court of Appeals for the District of Columbia Circuit. Petitioners' sole contention was that the Commission's action in amending the Table of Television Assignments contained in its Rules and Regulations by deleting Channel 9 from Hatfield, Indiana, on the basis of a notice of rule making specifically proposing only a change in channels in Evansville, Indiana, violated the notice and procedural provisions of Section 4 of the Administrative Procedure Act and deprived petitioners of both notice and an opportunity to demonstrate to the Commission that the proposed amendment was not in the public interest.

A three judge panel of the Court of Appeals (with Circuit Judge Fahy dissenting) held that petitioners had "actual notice" both of the proposed rule making and of the subjects and issues involved "as required by Section 4(a) of the Act" and that there was no denial of opportunity to participate fully in the rule making proceeding. (App. 1a-14a)

Circuit Judge Fahy issued a dissenting opinion in which he stated that considering the requirements of Section 4(a) of the Administrative Procedure Act, he was unable to construe the notice released by the Commission as adequate to support its order and that the Commission must carefully comply with the provisions Congress has provided for notice. (App. 15a-16a) Judge Fahy's dissent is as follows:

"The Administrative Procedure Act[1] provides two important safeguards for the protection of private rights in agency rule making by requiring, first, that there shall be publication of notice of proposed rule making, and secondly, that there shall be opportunity for participation by interested persons.

"Section 4(a) provides that notice of proposed rule making shall be published in the Federal Register and must include, among other things, 'either the terms or substance of the proposed rule or a description of the subjects and issues involved.' Section 4(b) provides that after notice has been issued, 'the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner. . . .' In rule making proceedings the provisions as to notice and public participation must be read together.

"Considering the requirements of §4(a), I am unable to construe the notice which was released by the Commission on June 26, 1956, as adequate to support the order of the Commission. The notice is entitled 'Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Evansville, Indiana)'; its first paragraph states that 'Notice is hereby given of rule making in the above-entitled matter.' The notice goes on in the second paragraph to announce that the Commission proposes changes in certain existing and named channels—some are to remain in Evansville while others will be reassigned elsewhere as specified. Neither Hatfield, Indiana, nor channel 9 then assigned to Hatfield, is mentioned anywhere in the notice; yet the Commission has ordered that the Table of Assignments contained in

[1] 60 Stat. 237, 5 U.S.C. §§ 1001-11 (1952).

Section 3.606 of its Rules and Regulations be amended to delete VHF television channel 9 from Hatfield, and to reassign it to Evansville for educational purposes. The legislative history of the Administrative Procedure Act makes clear that the notice issued by the agency in compliance with the mandate of §4(a) 'must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument relating thereto,' and that 'where notice is required, it should be complete and specific."[2]

"My view I think is fortified by the fact that channel 9 was sought to be brought into the Evansville proceedings by a counter-proposal. This counter-proposal, however, was objected to and the Commission delayed ruling on the objection until it was overruled simultaneously with the order eliminating channel 9 from Hatfield. If the Commission was to eliminate channel 9 it should have ruled on the objection to its involvement in the Evansville proceedings before actually deleting it from Hatfield.

"Our review of the merits of Commission decisions is limited. One of the justifications for the limitation falls away if the parties are not afforded a full opportunity to be heard before the Commission itself. It is important, therefore, that the Commission carefully comply with the provisions Congress has provided for notice." (App. 15a-16a).

[2] S. Doc. No. 248, 79th Cong., 2d Sess. 200 (1946).

REASONS FOR GRANTING THE WRIT

This case involves the important and fundamental question of whether there has been agency compliance with the rule making provisions of the Administrative Procedure Act concerning notice and public procedure, which were enacted by the Congress for the protection

of the rights of interested and affected persons. The Court below has decided a question relating to the construction and application of Section 4 of the Administrative Procedure Act, which question has not been, but should be, settled by this Court.

The decision below is a far-reaching one which nullifies the plain provisions of Section 4 of the Administrative Procedure Act with regard to notice and public participation and ignores the intention of Congress as expressed at the time of enactment of those provisions. The decision, in effect, approves a plan of convenience for the Commission and other federal administrative agencies in rule making proceedings as a substitute for compliance with the rule making notice requirements of Section 4 of the Act, in derogation of the rights of interested and affected persons. The decision affirms the Commission's action destroying the procedural rights established by Congress in Section 4 of the Act, and is an open invitation for the Commission and other administrative agencies to treat those procedural rights with impunity or to ignore them entirely. This case is one of broad significance and the decision, if permitted to stand, will have a serious and detrimental effect upon public rights in all federal rule making proceedings.

The majority decision is contrary to the views and recommendation contained in the 1958 Report of the Committee on Communications of the Administrative Law Section of the American Bar Association (R. 118-122) and is in conflict with the principle enunciated by the United States Court of Appeals for the Ninth Circuit in *Hotch* v. *United States*, 212 F. 2d 280, 282-3 (1954), that there must be strict compliance with the Congressional directive in the Administrative Pro-

cedure Act in regard to the procedure to be followed in the issuance of agency regulations.

This Court should determine the true meaning of the notice and public procedure provisions of the Act and by opinion make such meaning known for future guidance of the Courts and federal administrative agencies and for the protection of the rights of the public.

The Court Below Misconstrued and Misapplied the Plain Terms of Section 4 of the Act Contrary to the Intention of Congress as Expressed at the Time of Enactment

As set forth in the dissenting opinion of Circuit Judge Fahy, the Administrative Procedure Act provides two important safeguards for the protection of private rights in agency rule making by requiring, first, that there shall be publication of notice of proposed rule making, and secondly, that there shall be opportunity for participation by interested persons.

Section 4(a) of the Act dealing with Notice provides that *notice of proposed rule making shall be published in the Federal Register* "unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law" and shall include "either the terms or substance of the proposed rule or a description of the subjects and issues involved". Section 4(b) of the Act dealing with Procedure provides that after notice has been issued, "the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner . . ." In rule making proceed-

ings the provisions as to notice and public participation must be read together.[1]

The legislative history of the Administrative Procedure Act makes clear that the agency notice provided in Section 4(a) "must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument"[2] and that "where notice is required, it should be complete and specific".[3] Legislative history also makes clear that Section 4(b) guarantees interested persons an opportunity to participate in rule making at least to the extent of submitting written data, views or argument, and that the purpose of the provision is "to enable parties to express themselves in some informal manner prior to the issuance of rules and regulations, so that

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[1] In rule making procedures, the provisions as to notice (Section 4(a)) and public participation (Section 4(b)) must be read together. Section 4(a) of the Act "governs the application of the public procedures required by section 4(b) since those procedures only apply where notice is required by this section." (House Committee Report, 1946, p. 24; S. Doc. 248, 79th Congress, p. 258; also, see Senate Committee Report, 1945, p. 14; S. Doc. 248, 79th Congress, p. 200.)

[2] "Agency notice must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument relating thereto." (Senate Committee Report, 1945, p. 14; S. Doc. 248, 79th Congress, p. 200.) "Notice must fairly apprise interested persons of the issues involved, so that they may present relevant data or argument. * * * Statements of issues in the general statutory language of legislative delegations of authority to the agency would not be compliance with the section." (House Committee Report; 1946, p. 24; S. Doc. 248, 79th Congress, p. 258.)

[3] "There are two particularly important aspects of section 4(a), which deal with the notice of rule making. In the first place, where notice is required, it should be complete and specific as the subsection indicates on its face. * * *" (92nd Congressional Record 5650; S. Doc. 248, 79th Congress, p. 358.)

they will have been consulted before being faced with the accomplished fact of a regulation which they may not have anticipated or with reference to which they have not been consulted".[4]

The Court Erred in Holding That the Petitioners Had Actual Notice of the Proposed Rule Making and of the Subjects and Issues Involved as Required by Section 4(a) of the Act

The Court below recognized that "the notice of rule making did not mention Channel 9" (App. 6a) but concluded erroneously that petitioners had both "actual notice" and a description of the subjects and issues involved as required by Section 4(a) of the Act. (App. 9a, et seq.)

A reading of Section 4(a) of the Act will clearly show that petitioners did not have "actual notice" as required by that section. Comments filed by other

[4] "The second subsection of section 4 is designed to provide that, where other statutes do not require an agency hearing, the legislative function in administrative agencies shall, so far as possible, be exercised only upon some form of public participation after notice." • • •

"The effect of this provision will be to enable parties to express themselves in some informal manner prior to the issuance of rules and regulations, so that they will have been consulted before being faced with the accomplished fact of a regulation which they may not have anticipated or with reference to which they have not been consulted. This provision will make for good public relations on the part of administrative agencies. Wisely used and faithfully executed, as it must be, it should be of great aid to administrative agencies by affording them a simple statutory means of apprising the public of what they intend to do and affording the interested public a nonburdensome method of presenting its side of the case. Day by day Congress takes account of the interests and desires of the people in framing legislation, and there is no reason why administrative agencies should not do so when they exercise legislative functions which the Congress has delegated to them." (92 Congressional Record 5650; S. Doc. 248, 79th Congress, pp. 358-359.)

persons in response to the Commission's Evansville Channel 7 notice of rule making did not enlarge the agency notice or constitute actual notice of rule making with regard to any new proposals or counterproposals contained therein, within the meaning of Section 4(a).

Section 4(a) provides that agency notice of proposed rule making shall be published in the Federal Register "*unless all persons subject thereto are named and* either personally served or otherwise *have actual notice thereof* in accordance with law" (Emphasis added.) Section 4(a) deals with publication of agency notice and provides that "the only exception from the necessity of publication is where the persons subject to a particular rule are specifically named, and even then only if they are also either personally served or have actual notice". (*Hotch* v. *United States*, 212 F. 2d 280, 282, Footnote 7.) The thrust of the provision is to require the agency to give formal notice of its intention before rule changes are made.

In the instant case the Commission published its notice of rule making with respect to Channel 7 at Evansville in the Federal Register. It did not name the petitioners or any other persons in the notice of rule making as "persons subject thereto". Consequently, no question of "actual notice" of the possible involvement of Channel 9 at Hatfield is or could be presented or supported.

The Court's holding that actual notice of comments containing new and counterproposals filed in response to the Commission's notice of rule making constitute "actual notice", "just as Section 4(a) requires" (App. 9a) is clearly erroneous. Section 4(a) deals only with actual notice of agency notice. The Court

obviously misconstrued and misapplied the "actual notice" provision of Section 4(a).

Furthermore, as stated above, Section 4(a) of the Act provides that the agency notice shall include "either the terms or substance of the proposed rule or a description of the subjects and issues involved". The published notice with respect to Channel 7 at Evansville did not mention Channel 9 at Hatfield and did not contain the terms and substance of any proposed change to delete Channel 9 from Hatfield. It is obvious, therefore, that the notice was not "complete and specific" and that the description of the subjects and issues involved was not "sufficient to fairly apprise interested parties of the issues involved," so that they could "present responsive data or argument".

The following statement from the dissenting opinion of Circuit Judge Fahy precisely covers the point and demonstrates the error in the majority opinion:

> "Considering the requirements of § 4(a), I am unable to construe the notice which was released by the Commission on June 26, 1956, as adequate to support the order of the Commission. The notice is entitled 'Amendment of Section 3.606, Table of Assignments, Television Broadcast Stations (Evansville, Indiana)'; its first paragraph states that 'Notice is hereby given of rule making in the above-entitled matter.' The notice goes on in the second paragraph to announce that the Commission proposes changes in certain existing and named channels—some are to remain in Evansville while others will be reassigned elsewhere as specified. Neither Hatfield, Indiana, nor channel 9 then assigned to Hatfield, is mentioned anywhere in the notice; yet the Commission has ordered that the Table of Assignments contained in Section 3.606 of its Rules and Regulations be amended to delete

> VHF television channel 9 from Hatfield, and to reassign it to Evansville for educational purposes. The legislative history of the Administrative Procedure Act makes clear that the notice issued by the agency in compliance with the mandate of § 4(a) 'must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument relating thereto', and that 'where notice is required, it should be complete and specific'. (S. Doc. No. 248, 79th Cong., 2d Sess. 200 (1946)). * * * "

It is clear that the basic holding of the Court below that petitioners "had actual notice both of the proposed rule making and of the 'subjects and issues involved', just as Section 4(a) requires" and that "there were both actual notice and a description of the subjects and issues involved as required by Section 4(a)" is clearly erroneous. (App. 9a, 12a)

The Court Erred in Holding That There Was No Denial of Opportunity to Participate Fully in the Rule Making Proceeding

As stated above, Section 4(b) of the Act guarantees interested persons an opportunity to participate in rule making at least to the extent of submitting written data, views or argument. The purpose of the provision is to enable interested parties to express themselves prior to the issuance of rules and regulations so that they will have been consulted before being faced with the accomplished fact of a regulation.

Since the Commission's notice of rule making admittedly did not mention the removal of Channel 9 from Hatfield and dealt only with Channel 7 in Evansville, the notice presented no issue to which the petitioners or members of the public in Hatfield could

possibly present responsive data or argument on the dates specified for filing comments and counter-proposals.

The new proposals and counterproposals concerning the deletion or reservation of Channel 9 which were filed by WFIE and WEHT and Mid-America on the last day for filing comments, did not come to the attention of the petitioners until after the time for filing comments had expired. The only opportunity for participation at that stage of the proceeding was limited under the terms of the Commission's notice to the filing of "replies" to the original comments, which is clearly not the "opportunity to participate" through the submission of data responsive to issues or proposals contained in the agency's notice as prescribed by Section 4(b).

In holding that after the issuance of the Commission's final Report and Order in the rule making proceeding on March 1, 1957, the petitioners "had full opportunity, then and there to act, with detailed knowledge of all aspects of that Report and Order" (App. 11a), the Court misconceives entirely the purpose of Section 4(a) and (b) of the Act. A final report and order in a rule making proceeding can hardly be substituted for a preliminary notice of rule making initiating the proceeding. Any opportunity to file for reconsideration of such final report and order obviously is not the full opportunity to participate in the rule making proceeding as provided by Section 4(b). After the Commission issued its final report and order the rule making proceeding as such was at an end and the petitioners were faced with the accomplished fact of a regulation.

It can hardly be seriously urged that notice and knowledge of the contents of a final report and order in a rule making proceeding and the opportunity for requesting reconsideration thereof can be legally substituted for notice of rule making and opportunity to participate therein as provided by Section 4(a) and (b) of the Act.

The Court's holding that there was no showing that petitioners "were deprived of opportunity in any measure to take whatever steps their own situation might suggest, whether by way of counterproposal and comment or by evidence to establish their own position" (App. 14a), is clearly erroneous. As shown above, because of the defective notice, there was no stage of the proceeding at which petitioners could have filed original comments or counterproposals. The Commission's Evansville Channel 7 notice made no reference to Hatfield Channel 9 and thus presented no issue to which the petitioners, or other interested members of the public in Hatfield, could logically file comments or counterproposals within the time prescribed for filing such comments.

A Notice of Further Rule Making Was Required

The Court below vitiated the general purpose and meaning of Section 4 of the Act by approving Commission consideration of the new proposals and counterproposals concerning the deletion of Channel 9 from Hatfield which were outside the scope of the original Evansville Channel 7 notice of rule making, without first requiring the Commission to issue a notice of further rule making.

The procedure governing the filing and consideration of counterproposals in response to rule making

proposals of the Federal Communications Commission has been treated as a matter of great importance and has been given thorough study by the Committee on Communications of the Administrative Law Section of the American Bar Association. In its 1958 Report, the Committee considered at length the question "whether Commission consideration of counter-proposals not within the ambit of the original notices of proposed rule making is contrary to the letter and spirit of Section 4 of the APA." (R. 118-122) The Committee concluded as follows:

> "In view of the fact that Section 4 of the APA strives to insure public notice of the substance of administrative rule making (with the exceptions listed in the Act), it seems clear to this Committee that the general purpose and meaning of Section 4 is vitiated by the failure of the Commission to provide notice of counter-proposals by means of publication in the Federal Register or other procedures sanctioned by Section 4 . . ." (R. 121)

The Committee further stated that it was aware of the practical difficulties involved with regard to possible protraction of the rule making proceeding but held as follows:

> "However, the possibility of interminable protraction of rule making proceedings is not in itself justification for not abiding by the requirements of the Administrative Procedure Act rather than providing a procedural technique which would permit both compliance with the APA and serve administrative convenience." (R. 121)

Notices of Further Proposed Rule Making have been issued by the Commission in the following, among other, television rule making proceedings in order to afford interested and affected parties an opportunity to comment on alternate or counterproposals after the issuance of the original notice: Youngstown, Ohio, New Castle, Pittsburgh, Pennsylvania, FCC Docket 11280, 20 F.R. 6562; Shinglehouse, York, Lancaster, Harrisburg, Williamsport, Pennsylvania, FCC Docket 11499, 21 F.R. 5656; Peoria, Illinois, Davenport, Iowa-Rock Island-Moline, Illinois, FCC Docket 11749, 21 F.R. 5657; Springfield, Illinois, St. Louis, Missouri, FCC Docket 11747, 21 F.R. 7959; Bozeman-Helena-Butte, Montana, FCC Docket 11798, 21 F.R. 8542; New Orleans, Louisiana-Mobile, Alabama, FCC Docket 11752, 22 F.R. 501; Providence, Rhode Island, New Haven, Connecticut, Portland, Maine, FCC Docket 11957, 22 F.R. 728; Vancouver, Washington, FCC Docket 11877, 22 F.R. 4165; Albany-Schenectady-Troy and Vail Mills, New York, FCC Docket 11751, 22 F.R. 4505; Columbus, Georgia, FCC Docket 12054, 23 F.R. 489.

The Commission's action in issuing notices of further rule making in the foregoing and other proceedings indicates an awareness of the true meaning and requirements of the Act.

CONCLUSION

In view of the importance and widespread impact of the decision of the Court below, your petitioners respectfully pray that a writ of certiorari be granted under the seal of this Court directed to the United States Court of Appeals for the District of Columbia

Circuit, and for such further relief as to this Court may seem proper.

Respectfully submitted,

Of Counsel:

LOUCKS, ZIAS & JANSKY
American Building
Washington 4, D. C.

SPEARMAN & ROBERSON
Munsey Building
Washington 4, D. C.

JOSEPH F. ZIAS
American Building
Washington 4, D. C.

RUSSELL ROWELL
Munsey Building
Washington 4, D. C.

Attorneys for Petitioners

May 1, 1959.